

Senate Bill No. 2187

CHAPTER 267

An act to amend Sections 1801 and 1801.5 of the Welfare and Institutions Code, relating to youthful offenders.

[Approved by Governor August 5, 1998. Filed with
Secretary of State August 6, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2187, Schiff. Youthful offenders: continued treatment.

Existing law requires the court to order the Department of the Youth Authority to continue the treatment of a person who is otherwise eligible for discharge from the control of the department if the court, after the filing of a petition for further detention by the prosecuting attorney and a full hearing, is of the opinion that discharge of the person would be physically dangerous to the public for specified reasons. Existing law provides that if, after the court hearing, the person is ordered to remain subject to the control of the department, the person is entitled to request a jury trial on the question of whether he or she is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality.

This bill would instead provide that, upon review of the petition for further detention as specified, the court shall order a hearing to determine if probable cause exists to believe that discharge of the person would be dangerous to the public for specified reasons. If, following the hearing, probable cause is found, a jury trial or, if a jury is waived, a court trial would be required to be held to determine if the person is physically dangerous to the public. Because this bill would impose expanded duties on court personnel, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1801 of the Welfare and Institutions Code is amended to read:

1801. (a) If a petition is filed with the court for an order as provided in Section 1800, and, upon review, the court determines that the petition, on its face, supports a finding of probable cause, the court shall order that a hearing be held pursuant to subdivision (b). The court shall notify the person whose liberty is involved, and, if the person is a minor, his or her parent or guardian (if that person can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the hearing, and shall afford the person an opportunity to appear at the hearing with the aid of counsel and the right to cross examine experts or other witnesses upon whose information, opinion or testimony the petition is based. The court shall inform the person named in the petition of his or her right of process to compel attendance or relevant witnesses and the production of relevant evidence. When the person is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.

The probable cause hearing shall be held within 10 calendar days after the date the order is issued pursuant to this subdivision unless the person named in the petition waives this time.

(b) At the probable cause hearing, the court shall receive evidence and determine whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality. If the court determines there is not probable cause, the court shall dismiss the petition and the person shall be discharged from the control of the authority at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable. If the court determines that there is probable cause, the court shall order that a trial be conducted to determine whether the person is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality.

SEC. 2. Section 1801.5 of the Welfare and Institutions Code is amended to read:

1801.5. If a trial is ordered pursuant to Section 1801, the trial shall be by jury unless the right to a jury trial is personally waived by the person, after he or she has been fully advised of the constitutional rights being waived, and by the prosecuting attorney, in which case trial shall be by the court. If the jury is not waived, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the order for trial, unless the person named in the petition waives time. The court shall submit to the jury, or, at a court trial, the court shall answer, the question: Is the person physically dangerous to the public

because of his or her mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in the trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. A unanimous jury verdict shall be required in any jury trial. As to either a court or a jury trial, the standard of proof shall be that of proof beyond a reasonable doubt.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

